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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

)  
Policies and Rules Implementing )  
the Telephone Disclosure and Dispute )  
Resolution Act )

CC Docket No. 93-22

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OCT 11 1994

MCI COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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## **SUMMARY**

In these initial comments MCI indicates its full support for the Commission's intention "to clean up" the area of 800 information services providers who have sought, and found, "loopholes" in the Commission's 800 information services rule restrictions.

However, draconian measures, such as requiring underlying written contracts in all instances, may be over-reaction and could result in the placement of unwarranted obstacles in the path of electronic commerce. Specifically, MCI notes that enhanced services appear to fall under the Commission's definition of "information services" and, therefore, they would have to be provided pursuant to a "signed" presubscription agreement.

Instead, MCI urges that the Commission consider approaching the problem as MCI did by implementing restrictions on service use by tariff that effectively foreclose the use of 800 ANI for the billing of information services and empower MCI to discontinue service for other violations that result in conduct by information providers that unfairly affect customers.

Finally, the newest "scam" of information service providers is to escape the operation of the rules by filing tariffs containing very high rates for what amounts to the provision of information services. MCI contends that those who have elected

to operate in this manner have played into the Commission's hands and, under the circumstances, the Commission is fully empowered to deal with these entities in an appropriate manner.

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MCI COMMENTS

MCI Telecommunications Corporation (MCI) hereby provides its initial comments in response to the Commission's Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 94-200, CC Docket No. 93-22, adopted August 2, 1994 and released August 31, 1994 (Notice). Therein, the Commission proposes to amend its rules, specifically, 47 CFR Sections 64.1501, 64.1504, and 64.1510, to plug "loopholes" that have permitted information service providers to charge consumers for making calls on 800 lines without valid presubscription agreements.

Background

The Commission is seeking to strengthen protections against the growing use of 800 numbers in connection with the provision of information services.<sup>1</sup> The Commission finds this development disturbing because 800 numbers are widely perceived as being toll-free,<sup>2</sup> and because consumer complaints are increasing in substantial numbers. The Commission also is seeking to help consumers more readily identify charges for information services

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<sup>1</sup> Notice at 11.

<sup>2</sup> Id. at 12.

on their telephone bills.<sup>3</sup>

To address these concerns, the Commission is proposing to make several changes to existing rules. The new rules would:

- Clarify that the 800 rules<sup>4</sup> protect not only callers to 800 numbers, but also subscribers whose telephone lines may be used to place calls to 800 information services.<sup>5</sup>
- Assure that information service calls are charged only to individuals who enter into presubscription agreements with information service providers.<sup>6</sup>
- Prohibit the use of 800 numbers to connect callers to any information service that is not provided under a presubscription or comparable arrangement.<sup>7</sup>
- Modify the definition of a presubscription or comparable arrangement to require that such arrangements be established only with a legally competent individual and that they be in writing, unless charges are authorized to a credit or charge card generally accepted for the purchase of consumer goods, entertainment, travel, and lodging.<sup>8</sup>
- Establish a rule that carriers may not bill subscribers for presubscribed information services without evidence of a written agreement.<sup>9</sup>

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<sup>3</sup> Id.

<sup>4</sup> 47 CFR Sec. 64.1504.

<sup>5</sup> Notice at 13.

<sup>6</sup> Id. at 13-14.

<sup>7</sup> Id. at 13.

<sup>8</sup> Id.

<sup>9</sup> Id.

- Require that carriers performing billing for information service providers must identify that such charges are for "non-communications" services, that telephone service cannot be disconnected for nonpayment, and that access to information services may be involuntarily blocked for failure to pay legitimate charges; that carriers also display information service charges in a part of the bill separate from telephone charges, and specify the service provider's name and business telephone number, the telephone number actually called, the amount of the charge, the date and time of the call, and, for calls on a time-sensitive basis, the duration of the call.<sup>10</sup>

MCI Fully Supports the Adoption of Reasonable Rules to Protect the Public

MCI recognizes that consumers have become the victims of marketplace confusion and, in some cases, outright fraud perpetrated by some who furnish so-called "information services." Thus, MCI fully supports the Commission's effort to adopt rules to better protect consumers. However, MCI has serious reservations about proposed rules that would redefine "presubscription or comparable arrangement" to require an executed writing,<sup>11</sup> and would prohibit common carriers from billing subscribers for presubscribed information services without evidence of a written agreement.<sup>12</sup> If adopted, these rules would seriously impede the manner in which business in the electronic marketplace will be conducted and, therefore, would

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<sup>10</sup> Id. at 14.

<sup>11</sup> See Notice at 13.

<sup>12</sup> Id.

have a negative effect on legitimate commerce. On balance and in consideration of other alternative remedies, they are not necessary to achieve the desired end.

As an initial matter, although the Commission states that it intends to require a written agreement for presubscribed "information services," it fails to define that term with sufficient precision to give marketplace guidance. The Commission seems to indicate that "information services" are "pay-per-call services;"<sup>13</sup> however, the definition of that term is extremely broad. For example, it appears that "enhanced services", as defined by the Commission,<sup>14</sup> fall comfortably within the definition of "pay-per-call" services; specifically, Section 64.1501(a)(1)(c), which states that a pay-per-call service includes "any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call." Thus, under the proposed rules, all enhanced service offerings, including nonvoice enhanced services, would need to be offered on 900 access, in the absence of a written agreement.<sup>15</sup> As a result, the proposed rules could impact a significant number of current carrier enhanced service products and undoubtedly would affect adversely the development

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<sup>13</sup> Notice at 11.

<sup>14</sup> See Section 64.702(a) of the Commission's Rules.

<sup>15</sup> If MCI's understanding of the Commission's rules here is incorrect and enhanced services are not "pay-per-call" or "information services," the Commission should so indicate.



of future products.<sup>16</sup>

For example, MCI offers electronic mail, voice mail, answering and messenger services, all of which are enhanced services accessed by dialing an 800 number. Before these services commence, MCI obtains from customers -- typically by phone -- name, billing address, and security validation information. The customers are then sent "fulfillment packages" which, in addition to containing information on how to use the services, establishes contractual terms and conditions. By using the services, the customers agree to be bound to those terms and conditions. No other "written agreements", however, are obtained or deemed to be required.

Under the proposed rule, it appears that MCI might need to have a signed "writing" from its customers. This would be unacceptable because customers want fast, dependable, and responsive service to meet their needs. Moreover, a "writing" requirement likely could result in some customers not receiving service because, as carrier experiences with PIC changes prove, customers frequently do not return the "writing." The fact that a writing is a burden was recognized by the Commission when it

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<sup>16</sup> Tariffed, basic communication services which employ 800 access, such as relay service and MCI's new nationwide directory assistance service, 1-800-CALL-INFO, however, clearly would not be subject to the Commission's proposed rules because such services are exempted from the definition of "pay-per-call services" and are not otherwise prohibited under the Commission's existing or proposed 800 restrictions."

refused to require a writing for PIC changes.<sup>17</sup> Perhaps most important, this approach to conducting business operations has not been a problem in the past, as MCI is unaware of any consumer complaints arising from its implementation of these business practices.

The Commission's proposed rule also could adversely affect MCI Card customers. MCI Card is a tariffed product which enables MCI customers or their authorized users to make long distance calls billed to card accounts by dialing an 800 access number and using a PIN. MCI has recently begun to offer, as a function of the Card, enhanced services such as the ability to obtain weather information or voice-mail.

A customer can obtain an MCI Card and, as a result, the ability to access these services if he or she is an MCI presubscribed dial 1 customer. If the customer is not presubscribed to MCI, a Card is issued only after the customer provides certain identifying and billing information to MCI. Thereafter, the Card with a "fulfillment package" explaining the terms and conditions relating to the services that can be accessed with the Card, are mailed to the customer. However, the customer is not required to return a signed document prior to

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<sup>17</sup> See Policies and Rules Concerning Changing Long Distance Carriers, CC Docket No. 91-64, Report and Order, 7 FCC Rcd 1038 (1992); the same realization occurred at the state level as well. After a short period of time in which a writing was required for PIC charges, the Louisiana Public Service Commission no longer requires such a writing. See general Order (Amends and Supersedes General Order Dated May 12, 1993) In re: Slamming of Telephone Subscribers by Telecommunications Providers; July 8, 1993.

service provision. Therefore, if the Commission's proposed rule were to be adopted, it appears that MCI might have to terminate the ability of its customers to access enhanced services via the Card.

As should be apparent, transactions regarding the above services follow sound business practices; yet, none requires a writing as a foundation of, and precondition for, service provision. In addition, to the best of MCI's knowledge, as noted above, there have been no consumer complaints of the nature or type referenced in the Commission's Notice with respect to these services. Therefore, to require a writing for these services is not necessary to protect consumers and, as demonstrated, would not serve the public interest because it could interfere with service being furnished to existing customers, as well as unduly delay the provision of service to new customers. If the Commission ultimately adopts a writing requirement, at a minimum, it should exempt-out enhanced services and information services provided in connection with basic, tariffed services.<sup>18</sup>

Less Intrusive Measures are Available to Address the Problem

In its Notice, the Commission states that its proposed rule requiring a prior written agreement "would prevent IPs from creating instant 'presubscription' by immediately issuing to a

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<sup>18</sup> In addition, some information providers are using so-called "debit cards" to bill for their services. Assuming that the consumer is informed of all conditions and terms of service when it purchases a debit card, the purchase and use of the debit card should be deemed to create a "presubscription agreement."

caller either a PIN or a 'credit' card that is billed on a monthly telephone bill and usable for purchasing information services from the particular IP."<sup>19</sup> Such "instant" presubscription is possible only because information service providers receive automatic number identification (ANI) information from the underlying 800 service provider, thus allowing the information service provider to match the ANI information with the name and address of the customer of the originating telephone line. A problem arises, of course, when the customer-of-record for the originating line is not the same as the "customer" of the information service provider's program.

A written agreement requirement, however, is not necessary to remedy this problem. Rather, the Commission could simply adopt a rule requiring carriers to prohibit, by tariff or contract, the use of ANI (furnished as a byproduct of the provision of 800 Service) to bill, directly or indirectly, for information services not provided as an incident of the furnishing of tariffed common carrier services.

MCI's tariff currently prohibits 800 customers from using ANI to bill for noncommon carrier services,<sup>20</sup> violations of which

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<sup>19</sup> See Notice at 13.

<sup>20</sup> Section B-6.085 of MCI's Tariff F.C.C. No. 1 states: "Customers of MCI 800 Service may not use Automatic Number Identification (ANI), provided by MCI as an incident of its furnishing MCI 800 Service, to invoice, either directly or indirectly, their customers in connection with their furnishing of other than common carrier services."

will result in service termination.<sup>21</sup> MCI's tariff also provides for service termination when customers engage in efforts to impede the company's ability to investigate 800 numbers for regulatory compliance.<sup>22</sup> MCI believes that these provisions attack the problems identified by the Commission at their source and, therefore, provide a superior solution to one which imposes severe restrictions on commerce.

MCI also shares the Commission's concern that information service providers may use 800 numbers to provide access to international or other information services which do not fall strictly within the statutory definition of pay-per-call. To address this concern, MCI amended its tariff to prohibit customers from enticing consumers to call a toll or international number for information programs, unless the caller is advised that toll or international rates will apply.<sup>23</sup> MCI urges the Commission to prescribe a similar provision for applicability to all carriers subject to its jurisdiction.

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<sup>21</sup> Of course, customers may use ANI to bill for common carrier services such as relay service, directory assistance service (including 1-800-CALL-INFO) and dial-1 service.

<sup>22</sup> Section B-11.0111 of MCI's Tariff F.C.C. No. 1 lists as a reason for discontinuing customer service: "[t]he customer acts, or fails to act in a manner that hinders or frustrates any investigation by MCI or others possessing legal authority to investigate the customer's compliance with this tariff or with its other legal obligations."

<sup>23</sup> Section B-11.01110 of MCI's Tariff F.C.C. No. 1 lists as a reason for discontinuing customer service: "The customer uses service to entice callers to dial certain numbers and thereby incur intrastate, interstate, or international toll charges without informing them that such charges will be incurred."

The Commission also should aggressively pursue "carriers" for Communications Act violations, including those who seek to end-run the Commission's rules by effectively tariffing non-tariffable information services. On information and belief, some carriers are charging very high tariffed transmission rates for "operator services" which are actually information services resulting from the handling of the calls by "operators".<sup>24</sup> In this instance, when the means to achieve the desired end, namely, to escape the presubscription requirement by developing so-called "tariffed services," plays into the jurisdictional hands of the Commission, the Commission must be prepared to take prompt and decisive action against the wrongdoers. If it fails to do so, it will be sending the wrong signal into the marketplace, specifically, that it will not use its significant Title II enforcement authority to combat the problem.

**The Rule That Would Restrict Billing Only to Individuals with Written Presubscription Agreements is Inconsistent with Commission Precedent and Logic**

The rule that would restrict billing only to individuals with written presubscription agreements is inconsistent with

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<sup>24</sup> In a revealing program on NBC "DATELINE," October 4, 1994, an information service provider, apparently attempting to recruit new business associates, revealed that the "window of opportunity" for engaging in questionable consumer practices in the 800 information services arena is fleeting because lawmakers and regulators soon respond to shut down these operations, forcing the information service providers to search for new "loopholes." A tariffing scheme discloses a particularly bold, perhaps desperate, approach because -- to operate under the "tariffed service" exception -- these entities must subject themselves to direct Commission regulation.

Commission precedent and logic. In addition, it would result in an unfair shifting of the burden of proof to a carrier to determine whether there was a "legitimate" charge for a call.

In the context of information services, carriers currently are not required to determine whether a program is in compliance with the Commission's rules until there is a complaint. In most cases, complaints are initiated after the customer receives the bill and takes exception to the charges. The Commission's proposed rule, however, would require carriers to somehow determine whether a lawful agreement with a particular customer existed before billing. There is no realistic way to do this, even if carriers reviewed all information service programs before providing service because information service providers can change their programs easily, and without informing carriers. Moreover, even if a carrier determined that the "general" practices of the information service provider fulfilled the presubscription agreement requirements, the only way to determine whether an agreement with a specific customer is valid is to ask that customer. Certainly, the Commission cannot intend to impose so impossible a standard on carriers.

In addition, the proposed rule places the burden -- and thus the risk -- on carriers to determine the authority of callers to make calls over a particular telephone instrument. As a result, the instrument owner is relieved of his or her responsibility to police the use of the telephone. Without evidence to the contrary, it is reasonable for carriers to assume that use of a

particular phone instrument is (or was) authorized by the "owner" because it is not possible for carriers to undertake to prove whether telephone usage was in fact authorized by the telephone owner.

**MCI Requests a Reasonable Period of Time to Implement  
Billing Requirements Identifying Information Services**

While MCI has no objections to the proposed rule regarding special billing requirements for identifying information services, it requests that the Commission allow for a reasonable period of time to implement those requirements. MCI presently is working on internal procedures that would permit the implementation of these requirements in the near future. MCI, however, relies upon the LECs for billing a large majority of MCI's services and some of the LECs have systems or other constraints that complicate the process of separating information charges. MCI's concern is that an unreasonably short period for implementing these special billing requirements could force MCI to discontinue the provision of service to LEC-billed customers until an alternative billing mechanism could be implemented. Clearly this would not be in the interest of affected consumers.



Conclusion

WHEREFORE, MCI requests the Commission to consider the above comments in fashioning any new rules and in otherwise appropriately addressing the issues in its Notice.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Vernell V. Garey, do hereby certify that on this 11th day of October, 1994, copies of the foregoing "MCI COMMENTS" in the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act in CC Docket No. 93-22, were served by first-class mail, postage prepaid, upon the parties listed on the following attachment.

  
\_\_\_\_\_  
Vernell V. Garey

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